in accordance with the plaintiff's claim. The plaintiff also recovered the sum of $561.30 in respect of his claim in Suit 174/38. The costs were dealt with as follows:—On the claim in Suit 132/37 the plaintiff recovered half of his costs and all the costs of the counterclaim, and in Suit 174/38 half his costs, such costs to be taxed in each case.

I feel quite satisfied that the learned Judge intended all the costs to be taxed on the High Court scale, and I can see nothing in Order 62 rule 13 to prevent effect from being given to such intention. The opening words of the rule indicate that it is applicable when the plaintiff has initiated proceedings in the High Court when he could have brought them as easily and cheaply in the District Court. The plaintiff could not have asked for the declaration prayed for in the statement of claim under the District Court procedure and if he had not asked for such declaration in the claim the defendant could not have counterclaimed for the declarations which were subsequently made without having the case transferred to the High Court. Then by consent the actions were consolidated and carried on as one action, and such consolidated action could never have been determined in the District Court. It was certainly never the intention of the Rules that parties should be forced to bring part of their claim in the District Court and the remainder in the High Court. In my opinion, therefore the action was properly brought and continued in the High Court and the costs of the whole action were at the trial Judge's discretion and no certificate under Order 62 rule 13 was called for. The fact that the formal order dealt with the costs in several compartments was merely a matter of convenience, and the learned Judge must be deemed to have dealt with the costs as a whole and as costs of an action properly brought in the High Court.

On the merits also, therefore, there is no substance in the application which must be dismissed with costs.

Application dismissed.

[APPELLATE CRIMINAL JURISDICTION]
TERRELL, J.A.
May 6, 1940.

REX v. V. J. DASSAN.

[SINGAPORE MAGISTRATE'S APPEAL No. 28 of 1940]

Criminal Procedure Code, S. 182 (g)—Penal Code S. 420—Hearing and recording of evidence—Complainant and his witnesses—Examination of—Procedure—Practice.

Section 182 (g) of the Criminal Procedure Code does not excuse the Magistrate from hearing the evidence of all witnesses for the prosecution. In all criminal cases the complainant and such witnesses as he may produce must be examined, and the case must be decided on the effect of their evidence.

A Magistrate can avail himself of his powers under S. 182 (g) of the Criminal Procedure Code in the following cases:—

(a) where all the facts which the prosecution have set out to prove would not constitute a criminal offence even if they were accepted, or

(b) where an essential link in the prosecution case is provided by one or more witnessess whom the Magistrate has heard and whose evidence he is not prepared to accept.

Case referred to:—

(1) *Public Prosecutor v. Perianan Chetty,* 4 F.M.S.L.R. p. 30 distinguished and not followed.

MAGISTRATE'S APPEAL.

C. H. Butterfield (Crown Counsel) for the Crown.

Respondent in person.

The facts and arguments sufficiently appear from the judgment.

Cur. Adv. Vult.

Terrell, J.A.—The charge was one of cheating (section 420 of the Penal Code). The learned Magistrate after hearing the complainant acquitted the accused without giving the Prosecution the opportunity of calling their other witnesses in support of the charge.

The learned Magistrate purported to act under section 182 (g) of the Criminal Procedure Code which reads as follows:—

> "Nothing in paragraph (f) shall be deemed to prevent the Court from acquitting the accused at any previous stage of the case if, for reasons to be recorded by the Court, it considers the charge to be groundless;"

and the Crown has appealed against the acquittal, citing in support of their argument the case of *P. P. v. Perianan Chetty*[1], which was decided under a similar provision in the F.M.S. Criminal Procedure Code. The Court of Appeal (Woodward, C.J.C. and Reay, J.C.) ruled that if the prosecuting counsel asks the Court to hear a witness the Court cannot refuse to hear him, but must take all the evidence that the prosecution desires to be heard. The Court, however, dismissed the appeal on the ground that the prosecution had acquiesced in the procedure adopted. The *dictum* of the Court therefore was *obiter,* and, as it is contrary to the express provisions of section 182 (g) of the Criminal Procedure Code, I do not feel bound to follow it.

It appears to me that some effect must be given to this subsection, and I take it that a Magistrate can

avail himself thereof at any rate in the following cases:—

(a) where all the facts which the prosecution have set out to prove would not constitute a criminal offence even if they were accepted, or

(b) where an essential link in the prosecution case is provided by one or more witnesses whom the Magistrate has heard and whose evidence he is not prepared to accept.

In either of these cases it is obvious that to hear further evidence would be a mere waste of time.

In the present case it is clear that the deception which the prosecution relied on was a false statement made by the accused to the complainant as a result of which the complainant parted with $10.00. The prosecution were prepared to prove by a witness Haji Hassan that this statement had been made, and that the money was paid, and by another witness that the statement was untrue.

It was not competent for the learned Magistrate to decide finally as to the credibility of the complainant until he had heard Haji Hassan who might have supported him. Equally it was not competent to reject the evidence of a witness who had not been called. The fact, as found by the learned Magistrate, that the complainant and accused were almost in the position of partners, does not preclude the possibility of the accused having cheated the complainant. This was not therefore a case in which the learned Magistrate could avail himself of his powers under section 182 (g) after hearing the complainant only.

The appeal must accordingly be allowed and a retrial ordered before another Magistrate.

Retrial ordered.

[CRIMINAL REVISIONAL JURISDICTION]

AITKEN, J.

August 30, 1940.

REX v. ABU KASSIM BIN BABU.

[PENANG CRIMINAL REVISION No. 21 of 1940]

Criminal Procedure Code—S. 253 Part A of Table following—Compounding offence.

The offences set out in Part A of the Table following S. 253 of the Criminal Procedure Code can only be compounded with the consent of the Court. Such consent is not a mere formality and the Court has a discretion to grant or withhold such consent. The Magistrate may as a condition precedent to the giving of such consent require the accused to give an apology in open Court to the complainant. He cannot however impose upon the accused a condition that the accused must enter into a bond to keep the peace and to be of good behaviour for a specified period.

CRIMINAL REVISION.

Lim Kheng Kooi for the accused.

T. D. Hughes (Crown Counsel) for the Crown.

The facts and arguments sufficiently appear from the judgment.

Cur. Adv. Vult.

Aitken, J.—It is not usual for a Judge to deliver a written judgment when exercising the High Court's power of revision in regard to a Police Court case, but in this particular case, owing to its unusual circumstances and the questions of law which arose for my decision, I gave permission to both parties to appear and be heard by advocates, if they so desired. Both have availed themselves of that permission, and after hearing the arguments of learned counsel I reserved judgment.

It has not been an altogether easy matter for me to ascertain what actually did take place in the Court of the learned Magistrate concerned, when the accused appeared before him in the forenoon of the 9th of July, 1940, on a charge of having intentionally insulted the Imam of the mosque at Jelutong with intent to provoke a breach of the peace *contra* to the provisions of section 504 of the Penal Code. The learned Magistrate is in no way to blame for not having made a fuller note of the proceedings, because he was informed, as soon as the case was called, that the parties had arrived at a composition and only desired his consent thereto. In such circumstances the learned Magistrate had no reason whatever to suppose that the case would cause him or anyone else any further trouble, and consequently only made a short note of the subsequent proceedings which he has since expanded by a supplemental memorandum and certain information for which I asked him. From these materials I think I can reconstruct, so to speak, the proceedings in this matter which took place on the date in question.

On a previous date—the 25th of June 1940 to be precise—the accused had been charged before the learned Magistrate with having intentionally insulted one Haji Mohamed, who is the Imam of the mosque at Jelutong, with intent to provoke a breach of the peace, *contra* to section 504 of the Penal Code, and had claimed trial. The case was then, and on one other subsequent occasion, adjourned for further investigation, the accused being granted bail. When it was called on the 9th of July, 1940, it must be presumed that the police had completed their investigations and that the case was ready for trial.

As soon as the case was called the Court usher informed the learned Magistrate that the parties had